Field

Submitted Jan 21/87

679

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~456~~ 182

THOMAS THACHER, CLAIMANT OF 102 PACKAGES OF DISTILLED SPIRITS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT of New York.

FILED AUGUST 31, 1878.

Bradley

SUPREME COURT OF THE UNITED STATES.

No. 456.

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vs.

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1 UNITED STATES OF AMERICA, *ss :*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York in the second circuit, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you between Thomas Thacher, claimant of 102 packages of distilled spirits seized at 72 Courtlandt street, New York, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened to the great damage of the said Thomas Thacher, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your
2 seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court this 2d day of August, one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States for the Southern District of New York.

3 The foregoing writ of error is allowed. July 31st, 1878.
SAM'L BLATCHFORD.

4 (Indorsed:) U. S. Supreme Court. Thomas Thacher, pl'tiff in error, vs. The United States of America, def't in error. Writ of error. Filed Aug. 17, 1878.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

5 I, John I. Davenport, clerk of the circuit court of the United States, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages numbered from six to forty-seven inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Thomas Thacher, claimant of 102 packages of distilled spirits seized at 72 Courtlandt street, New York, plaintiff in error, against the United States of America, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York in the southern district of New York in the second circuit this 19 day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court, before you, between the United States of America and 102 packages of distilled spirits, seized at 72 Courtlandt street, New York, Thomas Thacher, claimant, a manifest error hath happened, to the great damage of the said Thomas Thacher, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the southern district of New York, in the second circuit, at the United States circuit court-rooms, in the city of New York, together with this writ, so that you may have the same at the said place on the first Monday of April next, in the said circuit court to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court, this 18th day of October, one thousand eight hundred and seventy-seven.

[L. S.] JOHN I. DAVENPORT, *Clerk.*

The foregoing writ of error is allowed.
October 17, 1877.

SAM. BLATCHFORD, *D. J.*

7 Circuit court of the United States for the southern district of New York in the second circuit.

THOMAS THACHER, CLAIMANT OF 102 PACKAGES distilled spirits, seized at 72 Courtlandt street, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT in error.

Know all men by these presents, that we, Thomas Thacher, George W. Thacher, and William A. Tyler, are held and finally bound unto the above named United States of America, in the sum of five hundred dollars to be paid to the said United States, for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the sixteenth day of October, one thousand eight hundred and seventy-seven.

Whereas, the above named Thomas Thacher has prosecuted his writ of error to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the judgment rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if
8 the above named Thomas Thacher shall prosecute his writ of

error to effect, and answer all damages and costs if he fail to make his writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

THOMAS THACHER, [L. S.]
108 *East 36th street.*
GEORGE W. THACHER, [L. S.]
108 *East 36th street.*
WILLIAM A. TYLER, [L. S.]
58 *Broad street.*

Sworn, and delivered, and taken, and acknowledged, this 16th day of Oct., 1877, before me.

[SEAL.] J. B. MARRECELLA,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas Thacher and George W. Thacher, William A. Tyler, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

THOMAS THACHER,
GEORGE W. THACHER,
WILLIAM A. TYLER,
58 *Broad street.*

Sworn to, this 16th day of October, 1877, before me.

[SEAL.] J. B. MARRECELLA,
Notary Public, N. Y. Co.

I approve of the sufficiency of the sureties to the within bond.
October 17, 1877.

SAM. BLATCHFORD, *D. J.*

9 UNITED STATES OF AMERICA, *ss:*

United States circuit court, southern district of New York.

THOMAS THACHER, CLAIMANT OF 102 PACKAGES distilled spirits seized at 72 Courtlandt street, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT in error.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, for the southern district of New York, in the second circuit, to be holden at the United States circuit court rooms, in the city of New York, in the said southern district of New York, on the first Monday of April next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern district of New York, wherein Thomas Thacher, claimant of 102 packages of distilled spirits, seized at 72 Courtlandt street, New York, is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 17th day of October, one thousand eight hundred and seventy-seven.

SAM. BLATCHFORD.

10 United States circuit court, southern district of New York, of April term, A. D. 1878.

THOMAS THACHER, CLAIMANT OF 102 PACKAGES distilled spirits, etc., plaintiff,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT. } In error.

Afterwards, to wit, on the first Monday of April, in this same term, before the justice of said circuit court, at the United States court rooms, in the city of New York, comes the said Thomas Thacher, by Thomas Harland, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the information aforesaid, and the matters therein contained, are not sufficient in law for the said United States to have or maintain its aforesaid action against the said 102 packages of distilled spirits; there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said United States against the said Thomas Thacher, claimant, as aforesaid, whereas by the law of the land the said judgment ought to have been given for the said Thomas Thacher, claimant, as aforesaid, against the said United States; and the said Thomas Thacher prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

THOMAS HARLAND,
Attorney for Plaintiff in Error.

11 United States circuit court, southern district of New York.

THOMAS THACHER, CLAIMANT OF 102 PACKAGES distilled spirits, etc., plaintiff,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT.

And afterwards, to wit, on the first Monday of April term, in the year of our Lord one thousand eight hundred and seventy-eight, the said United States by Stewart L. Woodford, their attorney, freely come here into court, and say that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid and they pray that the said circuit court, before the justices thereof, now here, may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, etc.

STEWART L. WOODFORD,
Attorney for Defendant in Error.

12 United States of America, southern district of New York.

At the district court of the United States, begun and holden at New

York City, within and for said southern district of New York, on the first Tuesday of October, A. D. 1877.

Present: Hon. Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA, BY INformation,
vs.
102 PACKAGES OF DISTILLED SPIRITS.

An information was filed in court on the 26th day of May, 1875, by George Bliss, esq., attorney for the United States, in said southern district of New York, in which information it was alleged that the United States bring suit against certain 102 packages of distilled spirits, to recover a forfeiture thereof, imposed by the internal revenue laws of the United States; and that said property was found on the 24th day of May, A. D. 1875, within said southern district of New York, and was, then and there, seized for the forfeiture aforesaid.

The said attorney for the United States did further, in said information, set forth divers matters as the matters relied on as causes of the said forfeiture, and did, by reason of the premises, pray the court that due process issue to enforce the forfeiture of the said property.

Thereupon on said 26th day of May, A. D. 1875, a warrant and
13 monition issued, commanding the marshal to attach the said 102 packages of distilled spirits and to detain the same in his custody, and to give notice to all persons concerned that they appear before the court on the 15th day of June, then next, and to make due return of his doings.

The marshal made due return thereon.

On the 15th day of June, 1875, a claim was duly filed in the clerk's office by Thomas Thacher to said 102 packages of distilled spirits, and on the same day the said Thomas Thacher executed in proper form the necessary stipulation for costs, and duly filed an answer denying that said property was forfeited to the United States by reason of any of the matters alleged in said information.

From said October term this information was continued to April term, A. D. 1876, when on the 12th day of said April, in pursuance of a stipulation duly entered into by and between Thomas Harland, attorney for said claimant, and George Bliss, esq., attorney for the United States, and duly filed on the 10th day of said April, an amended information was filed, which amended information is as follows, to wit:

District court of the United States for the southern district of New York, of May term, in the year one thousand eight hundred and seventy-five.

Before the honorable Samuel Blatchford, district judge.

On the twenty-sixth day of May, in the year one thousand eight hundred and seventy-five, comes George Bliss, esquire, the attorney for the United States, in the said southern district of New York, to prosecute a civil action in which the United States are concerned, and informs the court:

That the United States of America hereby bring suit against certain
14 property, to wit, one hundred and two packages of distilled spirits, seized at 72 Courtlandt street, in the southern district of New York, being at the time of the filing of the original information against the same in this action within said southern district of New

York, in the custody of Max Weber, esquire, collector of internal revenue for the second collection district of the State of New York, to recover a forfeiture thereof imposed by the internal revenue laws of the United States; and that the property before mentioned and described was found on the 23d day of May, in the year one thousand eight hundred and seventy-five, within the said southern district of New York, and within the said collection district, by the said Max Weber, esquire, who was, then and there, collector as aforesaid, on land, at a certain place, and within certain buildings, rooms, yards, and enclosures, constituting and connected with the premises known as 72 Courtlandt street, in the city of New York, and was, then and there, seized by the said collector for the forfeiture aforesaid, and has since remained in his care and custody as forfeited to the United States as aforesaid, until the monition, etc., hereinbefore issued were executed.

And the said attorney for the United States, now here, prosecuting in the name of the United States in that behalf, doth articulately propound the matters relied on as grounds or causes of the said forfeiture, as follows:

That the spirits above described were prior thereto produced and owned by Louis Teuscher, who was then duly authorized to carry on the business of a distiller, in the first internal revenue collection district of the State of Missouri, and who was then and there, and while he was owner of the spirits aforesaid, engaged in carrying on the business of a distiller with intent to defraud the United States of some part of the tax on the spirts distilled by him.

Second. That said spirits were thereafter, and prior to said seizure, owned by Bensberg, who then was duly authorized to carry on the business of a rectifier upon premises in the collection district aforesaid; that prior to said ownership of said Bensberg the Commissioner of Internal Revenue, pursuant to law, made a regulation which was, prior to said ownership by Bensberg, communicated to all persons concerned, requiring a certain return in certain cases from rectifiers, which return is and was then and there known as form 122, and is hereto annexed, and marked A.

That said Bensberg, while his ownership of said spirits continued, and with the purpose and intention of obtaining the issue to him of stamps for rectified spirits, to be placed upon certain other spirits upon which the tax had not been paid, and for the purpose of evading said tax, and enabling him to dispose of the latter mentioned spirits without compliance with any requirement of law respecting them, falsely made returns to the collector of the collection district aforesaid upon form 122 aforesaid, that the spirits first above mentioned were emptied for rectification upon his premises aforesaid, and the stamps, marks, and brands thereupon effaced and obliterated, and that said Bensberg, then and there, by means of a bribe of money for that purpose, paid by said Bensberg to a certain United States gauger, who was then and there charged with the duty of inspecting the emptying of packages of spirits for rectification upon the premises aforesaid, and of making his certificate relating thereto, as set forth in form 122 aforesaid, and of making a report relating thereto to said collector upon a form duly, by the Commissioner aforesaid according to law, for that purpose prescribed, and known as form 59, whereof a copy is hereto annexed, and marked B, induced said gauger to make his certificate upon form 122 as aforesaid, and the return, upon form 59 aforesaid, that the packages of spirits first above mentioned were emptied upon said premises, and the stamps, marks, and brands upon them effaced and obliterated, while, in truth

and in fact, such returns, form 122 and 59, and said certificate were wholly false, and said packages were not emptied, or said stamps, marks, or brands effaced or obliterated, but on the contrary thereof, said packages were subsequently shipped and delivered to the claimant in this action, and said Bensberg then and there conveyed to said claimant all the right, title, and interest therein which he could convey, in
16 view of the facts hereinbefore alleged, against the form of the statutes of the United States in such case provided; whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

And therefore, by reason of all and singular the premises aforesaid, the said attorney for the United States, on behalf of the United States, prays the court that due process issue to enforce the said forfeiture of the said property, found and seized as aforesaid, and to give notice to all persons concerned in interest, to appear and show cause, on the return day of the process, why the said forfeiture should not be decreed.

GEORGE BLISS,
Attorney for the United States for the Southern District of New York.

(122—REVISED.)

UNITED STATES INTERNAL REVENUE.

Rectifier's notice of intention to rectify.

To
Collector, ' *District of* .

Notice is hereby given that I, , will empty, for the purpose of * , the following-described packages of distilled spirits to wit, barrels, upon which are the following stamps, marks, and brands, and which an actual gauge shows to contain wine gallons and proof gallons:

*Rectifying, re-distilling, or compounding, as the case may be.

Serial No of cask.	Serial number of stamp.				Contents as shown by marks.			Contents as shown by gauger.			Name of spirits.	By whom produced.	District where produced.	Date of original gauge.	By whom gauged.
	Warehouse.	Tax-paid.	Rectified.	Wholesale dealers.	Wine gallons.	Proof gallons.	Proof.	Wine gallons.	Proof gallons.	Proof.					

Dated , 187 .

, *Rectifier,*
No. *Street.*

☞This notice will be filed with the collector in time to enable him to detail a gauger to gauge the packages and see them emptied.
Collectors will in no case issue stamps for rectified spirits until this notice is filed, nor for an amount exceeding in any instance the aggregate number of proof gallons specified in this notice.

I certify that on the day of , 187 , I made an actual gauge of the above-described spirits; saw the packages emptied and stamps destroyed; and that the column of "contents as shown by gauger" is correctly filled up.

U. S. Gauger.

18 (Indorsed:) (122—Revised.) Dist. of . Rectifier's notice of intention to rectify. , rectifier.

B.

No. 59.

UNITED STATES INTERNAL REVENUE.

Return of gauger of spirits to be made daily to collector in all cases; and, in case of gauging at distilleries, one copy to be sent to Commissioner daily, marked on the back "To the Commissioner for review."

[Each package must be reported separately.]

Return of spirits gauged for , in the district of , this day of , 187 .*

Serial No. of package.			Wine gallons. Capacity.		Wantage.	Correc'n of volume.	Indication.	Temperature.	Net wine gallons. Contents.		Proof.	Proof gallons. Contents.		Taxable gallons. Contents.	Tax due.		Serial number of stamp.	Kind of stamp.
Total.....																		

NOTE.—The wantage, indication, temperature, and correction of volume will be entered upon this report in all cases. Gaugers assigned to duty at distilleries will in future note on this report, on entry into warehouse, the temperature of the atmosphere at the time and place when and where the gauging and proving are performed.

....., *Gauger.*

20 (Indorsed:) 59. district of . Gauger's return of spirits. * warehouse. By , 187 . No. of proof gallons, . No. of taxable gallons, . Serial Nos. of packages, to . Serial Nos. of † stamps, to . , U. S. gauger.

21 On the 12th of April, 1876, the following demurrer was filed:

Demurrer.

U. S. district court, southern district of New York.

THE UNITED STATES
vs.
102 PACKAGES DISTILLED SPIRITS, SEIZED AT 72 Courtlandt street.

And the said Thomas Thacher, claimant of said distilled spirits, by Thomas Harland, his attorney, comes and says that the said amended information and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said United States to have or maintain their aforesaid action against the said distilled spirits, and that he, the claimant thereof, is not bound by law to answer the same.

And this he is ready to verify, etc.

New York, April 12, 1876.

THOMAS HARLAND,
Attorney for Claimant, 9 Murray Street, N. Y.

22 At a stated term of the district court of the United States for the southern district of New York, held in the court room of said court on Saturday, May 6, 1876.

Present, the Hon. Samuel Blatchford, district judge.

THE UNITED STATES
vs.
102 PACKAGES OF DISTILLED SPIRITS, SEIZED at 72 Courtlandt st.

The demurrer to the information in the above entitled action coming on to be heard, after hearing Thomas Harland, esq., claimant's proctor, in support of said demurrer, and Roger M. Sherman, esq., assistant U. S. attorney, in opposition, it is ordered that said demurrer be and is hereby overruled, and that the United States have judgment thereon, with leave to enter final decree of condemnation therein.

SAMUEL BLATCHFORD.

23 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, on the 19th day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

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*"Entered int." or "withdrawn from."

†"Warehouse" or "Tax paid."

Present, the Hon. Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs.
102 BARRELS OF DISTILLED SPIRITS, SEIZED at 72 Courtlandt st.

The monition in this case having been heretofore returned, and the usual proclamation having been made, and the cause coming on to be heard before the judge of the district court for the southern district of New York, upon the demurrer to the information therein, and upon hearing counsel for the respective parties, and due deliberation having been had thereon, it is ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power in him vested, doth hereby order, sentence, and decree, that the goods, wares, and merchandise, and articles above mentioned be, and the same are accordingly, condemned as forfeited to the United States. And it is further ordered, that unless an appeal or writ of error be taken from this decree within the time limited by law and prescribed by the rules and practice of this court, the stipulators for costs and value forthwith pay into court the amount of their stipulations, and that upon such payment thereof the clerk distribute the proceeds in satisfaction of this decree.

SAMUEL BLATCHFORD.

24 It is hereby stipulated that the above may be certified by the clerk as a transcript of the record in this cause, it being admitted by the plaintiff in error that all proceedings up to the filing of the amended information were regular and such as to give the court full jurisdiction of the cause.

THOMAS HARLAND,
Att'y for Pl'ff in Error.
STEWART L. WOODFORD,
Att'y for Def't in Error.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, clerk of the district court of the United States within and for the southern district of New York, hereby certify that the foregoing is a true copy of the record in the said cause.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court, this 13 day of November, A. D. 1877.

[L. S.] GEO. F. BETTS,
Clerk.

Printed matter correct.
N. Y., Nov. 23, 1877,

STEWART L. WOODFORD,
U. S. Att'y, for Def'ts in Error.

R. M. D.

25 (Indorsed:) United States circuit court, southern district of New York. Thomas Thacher, claimant of 102 packages distilled spirits, plaintiff in error, vs. The United States of America, defendant in error. Writ of error & record of district court. U. S. circuit court. Filed Nov. 30, 1877. John I. Davenport, clerk.

26 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Tuesday, the eighteenth day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

THOMAS THATCHER, CLAIMANT, PL'FF IN ERROR,
vs.
THE UNITED STATES, DEF'T IN ERROR.

Argument of the above-entitled cause upon writ of error to the district court of the United States for the southern district of New York coming on to be heard,

Thomas Harland, esq., of counsel for said plaintiff in error, is heard in behalf of the same.

Stewart L. Woodford, U. S. attorney, counsel for said defendants in error, is heard in behalf of the same.

Mr. Harland is heard in reply.

Curia advisari vult.

27 Circuit court of the United States, southern district of New York.

THOMAS THACHER, CLAIMANT OF 102 PACKages distilled spirits, plaintiff in error,
vs.
THE UNITED STATES.

WAITE, CH. J.:

Sec. 3451 Revised Statutes is as follows:

"Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five
28 years, and the property to which such false or fraudulent instrument relates shall be forfeited."

The Commissioner of Internal Revenue is required under the direction of the Secretary of the Treasury to "prepare and distribute all the instructions, regulations, form', blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue" (Rev. Stat., sec. 321), and by sec. 3289 the Commissioner was specially authorized to "prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, & gauging of (distilled) spirits."

Pursuant to this authority the Commissioner, with the approval of the Secretary, adopted as one of the rules and regulations of the department, that whenever any rectifier proposed to empty any spirits
29 for the purpose of rectifying, &c., he should in a specific manner and in the proper place enter upon a blank notice, known as form 122, the number and description of the casks or packages he would empty, and forward the notice in duplicate to the collector of the dis-

trict; upon the receipt of this notice the collector was required to deliver it to a gauger with instructions to make an actual regauge of the spirits specified therein, and make a report thereof on what was known and designated as form 59. From a copy of this report to be furnished by the gauger, the rectifier was required to fill up the column in form 122, headed "Contents as shewn by gauger," and the gauger to certify at the foot of the form that on the day of , 18 , he made an
30 actual gauge of the spirits described in the form; that he saw the packages emptied and stamps destroyed, and that the entire "contents as shown by the gauger" was correctly filled up. The gauger was also specially required to witness the dumping of the entire quantity of spirits that the rectifier gave notice on the form 122 he would empty, and any neglect in this regard was a breach of duty. This was part of the system of "inspection, weighing, marking, and gauging," adopted for the security of the collection of the taxes upon distilled spirits, and these certificates, returns, and notices were essential to an issue of stamps for rectified spirits.

The seizure in this case was for a violation of sec. 3451, and the information charges that the spirits seized were prior to these seizures owned by one Bensberg, who was duly authorised to carry on the business
31 of a rectifier upon premises in the first internal revenue collection district of the State Missouri, and that while the foregoing regulations werein force, & while his ownership of the spirits continued, he, "with the purpose and intention of obtaining the issue to him of stamps for rectified spirits, to be placed upon certain other spirits upon which the tax had not been paid, and for the purpose of evading said tax and enabling him to dispose of the latter-mentioned spirits without compliance with any requirement of law respecting them, falsely made returns to the collector of the collection district aforesaid, upon form 122 aforesaid, that the spirits first above mentioned were emptied for rectification upon his premises aforesaid, and the stamps, marks, and brands there-
32 upon effaced and obliterated; and that said Rensberg then and there, by means of a bribe for that purpose, paid by said Rensberg to a certain United States gauger, who was then and there charged with the duty of inspecting the emptying of packages of spirits for rectification upon the premises aforesaid, and in making his certificate relating thereto, as set forth in form 122 aforesaid, and of making a report relating thereto to said collector upon a form duly, by the Commissioner aforesaid, according to law, for that purpose prescribed, and known as form 59, * * * induced said gauger to make his certificate upon form 122 as aforesaid, and the return upon form 59 aforesaid, that the packages of spirits first above mentioned were emptied upon said premises, and the stamps, marks, and brands upon them effaced and
33 obliterated, while in truth and in fact such returns, forms 122 & 59, and said certificate were wholly false, and said packages were not emptied, or said stamps, marks or brands effaced or obliterated, but, on the contrary thereof, said packages were subsequently shipped and delivered to the claimant in this action," &c.

Upon demurrer to this information the district court entered a decree of condemnation and forfeiture, and it is now insisted that this decree is erroneous, because—

1. The regulation requiring the certificate and report alleged to have been falsely and fraudulently executed was not made pursuant to law;

2. The regulation, if valid, has reference only to the stamping of rectified spirits, and does not affect those that are unrectified, and upon which the tax on distilled spirits has been paid; and,

3. The false documents complained of did not "relate" to the
34 spirits in respect to which the certificate and report were made, but only to such as should have affixed to them any stamp obtained by means of the fraudulent device complained of.

It is certainly true that the Commissioner of Internal Revenue cannot alone, or in connexion with the Secretary of the Treasury, alter or amend the internal revenue law. All he can do is to carry into effect that which Congress has enacted. His regulations in aid of the execution of the law must be reasonable, and made with a view to the due assessment and collection of the revenue.

There can be no doubt of the reasonableness of the particular rules now under consideration. The very means employed by Bensberg to obtain an over-issue of rectifiers' stamps, shows their importance.
35 They create no new penalties under the law, but simply furnish the way of enforcing the old ones.

While the ultimate object of the regulations may be, and undoubtedly is, to ensure the proper stamping of all rectified productions, the immediate thing to be accomplished, as to means to that end, is the certainty of accurate returns from the rectifier of the quantity of distilled spirits actually used in his business. For this purpose a system of checks & balances has been adopted with a view to the detection of fraud between the rectifier and the distiller. Prudence requires such precautions, and honest dealers are not unnecessarily incommoded by them. The punishment is of the offence enacted by the statute. The regulations provide the means of detecting the offender. These
36 regulations require certain certificates and reports as the business goes on. The law makes it an offence to falsely or fraudulently execute, or procure to be falsely or fraudulently executed, any such certificate or report. The alteration in this case is, that such a thing has been done in respect to the spirits now in controversy. Clearly the case is brought within the statute.

The offending property is that about which the false and fraudulent certificate and report were made. Neither the certificate nor the report "relate" to any other property. If the fraud should be successful and an overissue of stamps procured, other property might become liable to forfeiture by reason of the subsequent use of such stamps, but that
37 would not relieve this from the effect of what has already been done. The forfeiture follows from the fraudulent act, whether successful or not, and the property to be forfeited is that in respect to which the false & fraudulent certificate has been made.

The decree of the district court is affirmed.

(Endorsed:) U. S. circuit court S. D. of N. Y. Tho's Thacher v. The United States. Opinion. U. S. circuit court. Filed Jul. 1, 1878. John I. Davenport, clerk.

38 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday, the fifth day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

Circuit Judge.

Present, the honorable Morrison R. Waite, Chief Justice of the Sup. Court U. S.

THOMAS THATCHER, CLAIMANT, PLAINTIFF in error,
against
THE UNITED STATES OF AMERICA, DEFENDANT in error.

This case coming on to be heard on the writ of error and record herein, and after hearing the advocates for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed that the judgment of the district court be and the same hereby is in all things affirmed, with costs.

M. R. WAITE,
Chief Justice, &c.

(Endorsed:) U. S. circuit court, S. D. of N. Y. Thomas Thacher, cl., pl'ff in error, ag'st U. S. of America, def't in error. Order affirming judgm't dist. c't herein. Stewart L. Woodford, U. S. att'y. U. S. circuit court. Filed July 5, 1878. John I. Davenport, clerk.

39 Supreme Court of the United States.

THOMAS THACHER, CLAIMANT OF 102 PACKAGES distilled spirits, seized at 72 Courtlandt street, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT error.

Know all men by these presents that we, Thomas Thacher, George W. Thacher, W. A. Tyler, are held firmly bound unto the above-named United States of America, in the sum of five hundred dollars to be paid to the said United States, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 31st day of July, one thousand eight hundred and seventy-eight.

40 Whereas, the above-named Thomas Thacher has presented his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judges of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if the above-named Thomas Thacher shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

THOMAS THACHER. [L. S.]
WILLIAM A. TYLER. [L. S.]
GEORGE W. THACHER. [L. S.]

Signed and acknowledged this 31 day of July, 1878, before me.

J. B. MARRECELLA,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

41 George W. Thacher, 108 East 36 st., William A. Tyler, 58 Broad st., being duly sworn, depose and say, and each for him-

self saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

GEORGE W. THACHER.
WILLIAM A. TYLER.

Sworn to this 31st day of July, 1878, before me.

J. B. MARRECELLA,
Notary Public, N. Y. Co.

I approve of the sufficiency of the sureties to the within bond.
July 31, 1878.

SAM'L BLATCHFORD.

(Endorsed:) U. S. Supreme Court. Thomas Thacher, pl'ff in error, v. The United States of America, def't in error. Bond on writ of error. U. S. circuit court. Filed Aug. 2, 1878. John I. Davenport, clerk.

42 United States Supreme Court. Of October term, A. D. 1877.

THOMAS THACHER, CLAIMANT OF 102 PACKages of distilled spirits, plaintiff,
vs.
THE UNITED STATES, DEFENDANT. } In error.

Afterwards, to wit, on the seventh day of August, in this same term, before the justices of the said Supreme Court, comes the said Thomas Thacher, by Thomas Harland, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the information aforesaid and the matters therein contained are not sufficient in law for the said United States to have or maintain its aforesaid action against the said 102 packages of distilled spirits;
43 there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said United States against the said Thomas Thacher, claimant as aforesaid, whereas, by the law of the land, the said judgment ought to have been given for the said Thomas Thacher, claimant as aforesaid, against the said United States; and the said Thomas Thacher prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

THOMAS HARLAND,
Attorney for Plaintiff in Error.

44 (Endorsed:) U. S. Supreme Court. Thomas Thacher, pl'ff in error, vs. The United States of America, def't in error. In error. Filed Aug. 17, 1878.

45 UNITED STATES OF AMERICA, *ss:*

United States Supreme Court.

THOMAS THACHER, CLAIMANT OF 102 PACKages distilled spirits seized at 72 Courtlandt street, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDant in error.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at the Su-

preme Court of the United States, to be holden in the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Thomas Thacher, claimant of
46 102 packages of distilled spirits seized at 72 Courtlandt street, New York, is plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 31st day of July, one thousand eight hundred and seventy-eight.

SAM'L BLATCHFORD.

47 (Indorsed:) U. S. Supreme Court. Thomas Thacher, pl'tiff in error, vs. The United States of America, def't in error. Citation. Filed Aug. 17, 1878.

48 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, DEF'TS in error,
ads.
THOMAS THACHER, CLAIMANT, PL'FF IN error.

And afterwards, to wit, on the twenty-eighth day of August, 1878, comes the said United States of America, by Stewart L. Woodford, their attorney for the southern district of New York, and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid; and they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid, may be in all things affirmed, &c.

STEWART L. WOODFORD,
United States Attorney.

(Indorsed:) 1878, Octo. term, U. S. Supreme Court. No. 746. The United States of America, def'ts in error, adversus Thos. Thacher, claimant, pl'ff in error. Joinder in error. Filed 3 September, 1878.

(Indorsement on cover:) No. 456. Thomas Thacher, claimant of 102 packages of distilled spirits, plaintiff in error, vs. The United States. S. New York C. C. U. S. Filed 31st August, 1878.

REC. 456—2

OFFICE SUPREME COURT U. S.
FILED
JAN 10 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

THOMAS THACHER, CLAIMANT, &c.,
vs.
THE UNITED STATES.
} IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The judgment complained of was given upon a demurrer to an information for the forfeiture of certain distilled spirits.

The information propounded but two grounds for the alleged forfeiture.

1st. (folio 14) That such spirits were, *at a time prior to their seizure*, owned by a person who was engaged in carrying on the business of a distiller with intent to defraud the United States of some part of the tax on the spirits distilled by him.

2d. (folio 15) That said spirits were afterwards owned by a rectifier, who, while such owner, for the purpose of evading the payment of tax *upon certain other spirits*, falsely made return to the collector that the spirits herein proceeded against were emptied for rectification upon his premises, and that such rectifier further induced a certain gauger to

make a false certificate and a false report to the collector that said spirits (those herein proceeded against) were emptied on said premises. And it is further alleged that the Commissioner of Internal Revenue had, before the making of said return, certificate and report, made a regulation pursuant to law requiring the execution of such instruments.

It is not claimed that the plaintiff in error, who was the claimant below, was in any manner a party to any of the alleged frauds.

First Point.

At the hearing in the District Court, forfeiture on the first ground stated in the information was claimed under section 3281 of the Revised Statutes.

That section provides that if any person shall do what was here done by the distiller, all distilled spirits owned by such person, wherever found, shall be forfeited.

In the opinion of the court below, the forfeiture denounced by this section attaches only at the time of finding, and accordingly did not attach to these spirits.

The section has received the same construction in other courts. (U. S. *v.* 100 Bls., 23 Int. Rev. Rec., 10.)

As the correctness of this construction was admitted in the Circuit Court, it is not supposed that this court will be asked to sustain the judgment upon this ground.

Second Point.

The information further demands judgment of forfeiture under section 3451 of the Revised Statutes.

That section provides that every person who falsely executes any document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely executed, shall be punished, and *the property to which such false instrument relates* shall be forfeited.

Three distinct acts are here charged in the information—

1st. That the rectifier made a false return upon Form 122.

2d. That he induced the gauger to make a false certificate upon said form.

3d. That he induced the gauger to make a false report or return upon Form 59.

These several returns and certificates are alleged to have been required by the regulations of the Commissioner of Internal Revenue, and their alleged falsity consists in the statement that the spirits herein proceeded against had been emptied, and the stamps, marks and brands thereupon effaced and obliterated.

It is to be noticed, however, that Form 122, attached to the information, (folio 17,) does not call for any such return from the rectifier, nor does Form 59 (folio 19) call for any such report from the gauger. The certificate of the gauger upon Form 122 is, then, all that calls for notice.

We say, then:

First. There was no regulation made by the Commissioner, *pursuant to law*, requiring such a certificate.

The only authority given to the Commissioner of Internal Revenue to prescribe regulations upon the subject is found in section 3289 of the Revised Statutes. He is there authorized to prescribe rules and regulations to secure a uniform and correct system of inspection, &c.

The Commissioner is not authorized to impose new obligations upon the citizens, but merely to determine the manner in which those obligations imposed by the statute shall be complied with.

The statute nowhere calls upon the owner of spirits upon which the tax has been paid, and which are properly marked, stamped and branded, to report to any revenue officer of his intention to empty such spirits. The authority of the Commissioner is exhausted as to such spirits, except as to some few points exclusively affecting the storage and sale of the packages.

It is true, that if such spirits are subsequently put into other packages, for shipment or sale, the Commissioner once more has authority over them; but, until then, the statute nowhere subjects them to his control, except as to their storage and sale.

And we are distinctly told (folio 15) that the spirits in suit were never emptied, but were delivered to the plaintiff in error with all their marks, stamps and brands.

Second. The information (folio 15) describes the rectifier as in possession of *two distinct lots of spirits*, to wit, 1st, those in suit, upon which the tax had been paid, and which were regularly marked, stamped and branded; and, 2d, certain other spirits, upon which the tax had not been paid, and which he desired to procure to be stamped.

It is to these last-mentioned spirits alone that the regulations can be held to *relate*, for it is upon them alone that the revenue officers are called to act. The Form 122 instructs the collector as to the issuing of stamps for these last-mentioned spirits.

Third. But, even as to such spirits, the authority of the Commissioner to issue such regulations may well be doubted.

Section 3320 of the Revised Statutes directs, that *whenever* any package of rectified spirits is filled on the premises of any rectifier, it shall be the duty of the gauger to affix to the package a certain stamp. Section 3314 provides the manner in which such stamps are to be furnished to the gauger.

The statute provides that the stamp shall be affixed by the gauger *whenever any package is filled, &c.* The Commissioner directs that this shall not be done unless certain preliminary conditions have been complied with.

The Commissioner has assumed to change the law. This he cannot do.

U. S. *v.* 200 Barrels, 5 Otto, 571.

Fourth. But if the order of the Commissioner is to be deemed a *regulation* within the meaning of section 3451, what does it prescribe? Not that any person owning spirits shall make report when he empties them, but merely that no stamps shall be issued for rectified spirits until evidence is furnished that an equivalent quantity of spirits have been emptied. The documents called for by the regulation are simply and solely called for as evidence preliminary to the regular affixing of stamps to such rectified spirits. The documents then *relate* wholly to the rectified spirits, the subsequent stamping of which is to be procured by means of such evidence.

In other words, "the property to which such false or fraudulent instrument relates," in the sense of section 3451, is that property, and that alone, the legal status of which is or would be affected by the acceptance of such instrument as true and genuine.

Fifth. Under the elaborate system of stamps, marks, and brands prescribed by law for use on distilled spirits, every point should be strained against a construction which will forfeit property found in the hands of an innocent holder, and bearing upon its face every mark of regularity.

For these reasons the judgment of condemnation should be reversed and the property be released.

All which is respectfully submitted.

THOMAS HARLAND,
Of Counsel.

OFFICE SUPREME COURT U.S.
FILED
SEP 30 1880
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

THOMAS THATCHER
vs.
UNITED STATES.
No. 182.

ERROR TO UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.